Wisconsin State Senate
24th Senate District

Serving Wood, Portage, Adams
Waushara, Marathon & Marquette

JULIE LASSA
STATE SENATOR

Testimony on Assembly Bill 651, the Child Victim's Act
Assembly Committee on Children and Family Law
January 24, 2008

Assembly Bill 651, the Child Victim's Act, repeals the statute of limitations for civil suits filed by victims of childhood sexual abuse, and allows victims who are currently barred from bringing suit because they are over the age of 35 a three year window to bring their perpetrator to civil court.

This legislation will expose sexual predators living in Wisconsin who have, in many cases, been given anonymity and protection under Wisconsin's current civil statute of limitations on childhood sexual abuse cases. The Child Victim's Act will make Wisconsin a predator's worst nightmare by finally giving the innocent victims of sexual abuse a voice in Wisconsin, regardless of when the victims are able to deal with their personal tragedy.

Assembly Bill 651 does not target any specific organization or group, but casts a wide net to bring all sexual abusers to justice whether they are a neighbor, a parent, a sibling, a teacher or a religious leader. Sexual abuse is a societal problem that is not limited to any one part of our nation, any one class of people, or any institution.

By some estimates, there are over 39 million survivors of childhood sexual abuse in America today. The Federal Bureau of Investigation statistics on sexual abuse of children indicate that in the United States one in four girls is sexually abused before the age of 18 and 1 in 6 boys is sexually abused by the same age. Additionally, the FBI has shown that as many as 90% of childhood sexual abuse victims never report their abuse to law enforcement and more than 30% never report their abuse to anyone. The National Center for Victims of Crime statistics show that incest is the most common form of child abuse – 43% of children who are abused are abused by family members, 33% are abused by someone they know, and the remaining 24% are sexually abused by strangers. The silence surrounding sexual abuse must change – one way we can bring change is to allow victims the opportunity to come forward and expose their abuser.

There are some groups who believe that this legislation will bring about frivolous lawsuits. Wisconsin law already has protections to ensure this doesn't occur. Not only do victims who choose to bring action against their abuser have the burden of proof – they must prove, beyond a shadow of a doubt, that they were molested - but the State of Wisconsin has a long standing law that severely punishes those who bring false charges and allegations forward. There are strong protections in place to prevent these types of cases from being heard. Additionally, victims have the additional hurdle of finding an attorney to bring their case forward. Frivolous lawsuits are the exception and not the norm in Wisconsin's civil justice system.

States that have enacted the Child Victim's Act, such as California and Delaware, have unearthed and brought to justice hundreds of previously unknown sexual predators. Exposing these perpetrators protected countless children in those states and allowed victims to begin the process of healing. Children and victims in Wisconsin should be allowed this same opportunity.

OFFICE: State Capitol, P.O. Box 7882, Madison, WI 53707-7882 **PHONE:** (608) 266-3123
TOLL-FREE: 1-800-925-7491 **E-MAIL:** sen.lassa@legis.state.wi.us **DISTRICT NUMBER:** (715) 342-3806

WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

No Deadline for Justice:
The Child Victims Act would help sexual abuse victims and identify hidden pedophiles

By State Senator Julie Lassa & State Representative Scott Suder

Imagine your child was a victim of sexual abuse. Now imagine that the perpetrator gets away with it. If the thought makes your blood boil, you should know that, right here in Wisconsin, there are people who have committed sexual crimes against children, crimes they have never been punished for. That's because of criminal and civil statutes of limitations that put an arbitrary deadline on when people abused as kids can have their day in court.

Statutes of limitations are a particular problem when it comes to childhood sexual abuse. Most sexually abused children are molested by family members or authority figures, and the pressure is strong not to disrupt their own home, school or church. Young victims are often threatened by adult perpetrators if they reveal the crime, and the shame and confusion children feel is frequently enough to keep them silent. As adults, it may take victims years to come to grips with their experience and build the courage they need to identify their abuser and begin civil or criminal action. By the time they're ready to do so, the statutes of limitations may have expired; it may be too late for justice to be done.

These arbitrary deadlines do more than just rob child sexual abuse victims of their day in court. They endanger every child in our community, because they decrease the likelihood that people who prey sexually on children will be identified and stopped. And we know that hardcore pedophiles, if given the opportunity, will continue to seek out new victims. Research has shown that these child molesters will have over 80 – 100 victims during a life time and will continue to victimize children well into their 60s and beyond.

How big is the problem? In Wisconsin, one in five kids will be sexually abused by age 18. We also know that 90 percent of child sexual abuse is never reported to law enforcement authorities; 30 percent of victims never tell anyone. As a result, the National Clearinghouse on Child Abuse and Neglect estimates that only about three percent of child molesters are ever caught. That raises the specter of hundreds of pedophiles walking the streets of Wisconsin towns, safe in the knowledge that they are protected by the law from ever being held accountable for their deeds.

It has been held unconstitutional to retroactively extend a criminal statute of limitations, but we can change the statute of limitations for civil cases. That's what happened in Wisconsin in 2004, when the deadline for bringing civil suits against child abusers was extended until the alleged victim is age 35. Although this was a step in the right direction, it doesn't go far enough to give all victims justice and identify more pedophiles.

That is why we have teamed up with 29 other legislators to introduce the Child Victims Act. It removes the civil statute of limitations entirely, so pedophiles would no longer be protected by a legal "home free" date from facing their victims in court. It would also provide a three year window in which a person who is currently barred from bringing a suit would be allowed to bring their trial forward. The bill is supported by law enforcement and numerous child abuse and sexual assault prevention groups.

There have been objections raised to the Child Victims Act by people who worry that creating a window for retroactive suits will encourage false claims, or that the accused will have difficulty defending themselves against charges for an act that may have occurred 20 or 30 years ago. The fact is that the burden of proof is on the person claiming the abuse. Bringing a suit for sex abuse, especially against a family member or a respected individual, takes a lot of courage, because one must relive the traumatic events before the entire community. And, as we have seen in other states, the number of false claims amounts to just a handful and that, even after many years, there is evidence in many cases that supports the victim's claims.

Will the Child Victims Act be successful? In California, where a similar time window for retroactive suits was enacted, 300 previously unknown child sex abusers were identified as a result. Frankly, we are less concerned about the remote possibility that sex offenders will be harmed than we are about making sure that victims of sexual abuse have their day in court and offenders are held accountable for their actions, preventing them from preying on other innocent children.

Please contact your state legislator at 1-800-362-9472 and ask him or her to support the Child Victims Act.

Assembly Bill 651/ Senate Bill 356 Talking Points

Why the Wisconsin Civil Statute of Limitations Needs to be changed

- There is no "statute of limitations" on the pain and suffering child molesters cause victims
- Victims suffer a lifetime with issues of depression, anxiety, alcoholism, drug addictions, intimacy issues, authority issues, eating disorders and other debilitating problems directly attributable to being sexually abused
- Victims need more time. Mental health professionals acknowledge sexual abuse committed against a child is so traumatic most victims are not able to tell about the abuse until well into adulthood if ever…opening up the civil statute of limitations greatly enhances our ability to expose offenders.
- Most perpetrators continue on to abuse a new generation of victims – it is not unusual for offenders to be their 60s, 70s and sometimes older. Exposing them through civil litigation would prevent additional victims of child sexual abuse.
- The current law works to shield predator's identities by keeping victims out of the justice system.

Wouldn't it make it More Difficult for the Accused to Defend Themselves?

- It is up to the victim to prove that the sexual abuse occurred and to prove that the injuries suffered relate to that abuse – "burden of proof"
- Wisconsin law allows the courts to "punish" frivolous lawsuits
- There is concern for witnesses becoming unavailable and evidence becoming stale as time passes. When an adult victim musters the courage and exposes the perpetrator usually other victims come forward and documents that had been hidden get revealed.

Balancing the Rights of Child Molesters with Those of Innocent Children

- Rarely do perpetrators stop molesting children until they are brought to justice
- Sexual abuse and rape are the only crimes that allow perpetrators to remain confined by civil commitment after they have served their criminal prison sentence
- Most abused children will never be reported. Eliminating the statute of limitations in civil cases merely furthers the ability for perpetrators to be exposed, thereby protecting Wisconsin's innocent children.

Giving Perpetrators a "Free Pass" for Their Crimes Leaves More Children at Risk

- Child Molesters can have well over 80-100 victims in a lifetime (The Male Survivor: The Impact of Sexual Abuse, Parynik Mendel)
- The Federal Bureau of Investigation statistics on sexual abuse of children indicate that in the United States one in four girls is sexually abused before the age of 18 and 1 in 6 boys is sexually abused by the same age.
- 90% of child molesters are known to the child and less than 3% of all perpetrators will ever be caught (National Clearinghouse on Child Abuse and Neglect)
- Once a statute of limitations has expired the perpetrator no longer needs to fear prosecution and empowers them to abuse again.

Senate Bill 356/AB 651

- Lifts the current statute of limitations on civil cases from 35 to WIDE OPEN
- Allows a person who is currently barred from bringing a suit to having a three year window to bring their trial forward after bill becomes law
- Does NOT apply to anyone under the age of 18 (a 17 year old having relations with a 16 year old would not be subject to this legislation) – question for drafter – what would happen in this case?

Constitutionality

- There was a Supreme Court Case in 2007 that said a man could not sue his priest when he was abused in the 1960's – the ruling indicated that there was a willingness to reconsider how soon victims must sue after the abuse (and if the separation of church and state prevents suits)

- http://www.jsonline.com/story/index.aspx?id=340679

- The Wisconsin Supreme Court has held in the past that a statute of limitations extinguishes both the right and the remedy for the wrongdoing. The court has gone on to say that retroactive extension of the period of a statute of limitation amounts to taking of a right without due process, and is unconstitutional.

- Marci Hamilton, a constitutional attorney says that "window legislation" is not unconstitutional IF the legislative intent to make the law retroactive is express and if the law affects procedural rights or substantive rights where the public interest in identifying child predators and empowering child sex abuse victims.

Why are we excluding people under the age of 18 years old?

- Recidivism rates are low for these kids
- Perpetrators who are adults have a predatory behavior…not juveniles
- There are statutes pertaining to kids under 18 if the victim wants to sue - Section 893.54 provides that any action for damages for injury to a person must be commenced within 3 years of the injury or be barred.

Isn't this the same legislation that was introduced before?

- The previous legislation focused solely on clergy abuse.
- This legislation is completely neutral in its application – it is not designed to target a specific group of offenders or a specific institution.
- All institutions, both public and private, can be sued under current law if they allow the sexual abuse of children

Isn't this just about money?

- There are those who will argue that this is just about money, and especially about putting money into the hands of plaintiff's lawyers, but what this is really about is justice. The reality is that in this society at this point in history, justice is often measured in terms of money. Compensation for the suffering of victims is expected.

Won't this legislation encourage "bogus" cases?

- Whose side are we on? The kid's side or the perpetrators side?
- The burden of proof lies with the victim – and even before the victim gets to court they have to find an attorney to take their case
- There are statutes to punish those who bring forth frivolous lawsuits under 802.05
- Patrick Schiltz, dean of the University of St. Thomas Law School, was quoted in the New York Times saying that in more than a decade of defending Catholic dioceses against sexual abuse lawsuits, he had concluded that "fewer than 10" of the over 500 cases he handles were based on false accusations

Stop it Now! Statistics

In 2006, Stop it Now! Wisconsin surveyed adults in Marathon and Milwaukee counties about their attitudes, beliefs, and actions they would take related to child sexual abuse.

The study – the first of its kind in Wisconsin – used a statistically random telephone survey of 803 residents, 501 in Milwaukee County and 302 in Marathon County.

- **1 in 5 adults sexually abused as a child**

One in five adults (21.5%) disclosed during the phone interview that they had experienced sexually abusive behavior by an adult or older child while they were children. Using the 2000 census figures, that is 27,054 people in Marathon County and 202,135 in Milwaukee County or 229,189 people total.

The study also showed that while awareness of child sexual abuse is high, Wisconsin residents have a fairly limited understanding of the issue. They lack information that could help them prevent abuse before a child is harmed. According to the random-digital-dial (RDD) survey:

- 1 in 4 women and 1 in 8 men reported being sexually abused themselves as a child. This is higher then the national average of 1 in 5 girls and 1 in 10 boys.
- While 97% of participants felt it is important for victims of child sexual abuse to get professional help only 37% felt that adults who have abused children could stop these behaviors with the appropriate treatment.
- About one-fourth (27.8%) of the survey respondents said they told an adult about the sexual abusive incident while still a child. Of those who did tell an adult, nearly 6 in 10 (62.4%) recalled the incident was not reported to authorities.

Who Supports SB 356/AB 651?

NAPSAC
Wisconsin District Attorneys Association
Children's Trust Fund
Stop it Now! Wisconsin
Wisconsin Coalition Against Sexual Assault
Prevent Child Abuse Wisconsin
Children's Service Society of Wisconsin
Child Abuse Prevention Fund
Children's Hospital & Health System
Child Advocacy Center of North Central Wisconsin
Mary Ann Renz-CAP Fund Grant Review Committee member
Patty Marchant-Therapist, Midwest Center for Human Services
Association of State Prosecutors
Stop Child Predators
Citizens for a Safe Wisconsin
Milwaukee Wraparound
The Counseling Center of Milwaukee
The Healing Center, Milwaukee
Children's Hospital of Wisconsin-Child Protection Center

Most Reverend Timothy M. Dolan
Archbishop of Milwaukee
Legislative Testimony
Assembly Committee – Children & Family Law
January 24, 2008

Thank you. My name is Timothy Dolan, the Catholic Archbishop of Milwaukee testifying in opposition to Assembly Bill 651.

While it is always an honor to appear before public servants such as you, I must admit that this privilege is tempered today by sadness. The fact this bill is even before you is a recognition that individuals and institutions, including clergy and churches, have failed to protect children from sexual abuse. Never do I pass up an opportunity to publicly apologize for this horror, sin, and crime, and today, I do so again, especially to victims/survivors and their families.

My sadness is also tempered by the knowledge of what Catholic people and their pastors have accomplished –- nationwide –- but particularly in Wisconsin over the past six years.

Yes, I come before you this afternoon representing a Church that is ashamed; ashamed of its past handling of incidents of sexual abuse, ashamed of the actions of a tiny minority of priests who tragically acted contrary to everything the Church stands for, and of some bishops who may have enabled their behavior.

But, I also come before you this afternoon, representing a Church that, with the help of its people, has risen to leadership on this issue.

Doctor Paul McHugh, an internationally-respected psychiatrist and expert on child abuse at Johns Hopkins University, has stated that no one organization is doing more to prevent child abuse, and help those who have survived it, than the Catholic Church, regarded now now as a leader in how to prevent and respond to sexual abuse of minors. In the past, the Church was, at times, an example of what NOT to do; now, we are looked to as a model of what TO do.

Some of the things we have done include:

- Having an office for Sexual Abuse Prevention and Response Services, staffed by a full-time professional who has an excellent reputation within the community on this issue, as an advocate for victims/survivors;

- Providing mandated safe environment training for more than 28,000 parish and school staff and volunteers who work with youth –- training that helps people to recognize the signs of abuse and neglect, and educates people on how to report it;

- Publicly identifying all diocesan priests, deceased and alive, who have been removed from ministry because of a substantiated allegation of sexual abuse of a minor;

- Personally meeting with dozens of victims/survivors, and offering to meet with any victim/survivor or family member who wants to meet with me;

- Establishing an independent Review Board, led by former Lt. Governor Margaret Farrow, and staffed by experts in sexual abuse, who have the clout to "hold our feet to the fire," making sure we are keeping the promises we have made;

- Participating in four outside, independent, professional audits that have shown the archdiocese to be in full and complete compliance with rigorous standards;

- Mandating criminal background checks on every priest, deacon and seminarian; every archdiocesan, parish or school employee; and every coach and volunteer who has regular interaction with children;

- Turning over all reports of sexual abuse of a minor to the appropriate district attorney;

- Releasing all documents of accused priests to the Milwaukee district attorney's office for review;

- Hosting public listening sessions gathering together community leaders, civic officials, church leaders with victims/survivors and their families;

- Establishing a voluntary, independent mediation system that has resulted in resolution with nearly 170 victims/survivors, providing psychological, spiritual, and financial assistance to victims/survivors.

- Supporting, along with the Jewish Conference and the Wisconsin Council of Churches, a law you enacted four years ago to add clergy to the list of "mandatory reporters" of child abuse;

- At the same time, supporting a substantial extension of the statute of limitations on civil lawsuits against those who sexually abuse children.

As I acknowledge that there is always more that can and must be done, I must be candid in observing that, in opening a window that nullifies the statute of limitations for cases of long ago; this bill goes way too far.

Although you will hear/have heard that this bill is not targeted at any one group or institution, I must say that, this bill, if enacted, will do great damage to the one and one-half million Catholic citizens of this state. It will kneecap or even eliminate our ministries to vulnerable and needy people. It will saddle this generation of Catholic people and the next, with the inevitable loss of services and ministries caused by a radical new requirement to deal with the sins and bad judgment of past generations. Today's parishioners were children themselves when these horrible deeds and misjudgments took place. They abhor it with every bone in their body. They are now working hard with the Church to eradicate the harm done.

As you consider this bill, please keep in mind that we have not used the statute of limitations to shirk our responsibility to victims/survivors of sexual abuse.

Our archdiocese made a commitment to reach out to those wounded by abuse. With the help of people like Judge Janine Geske, and under the leadership of Eva Soeka and Marquette University's Center for Dispute Resolution, an independent mediation effort for victims was created in 2004. We committed ourselves to assist victims, "to the point of sacrifice."

To date we have reached mediated settlements with nearly 170 victims/survivors, including not only a financial resolution, but pastoral, spiritual

and emotional care for individuals and their families, including ongoing therapeutic care. This mediation program works and we have sacrificed to do it.

The cost of mediation, settlements, therapy, and outreach has cost more than $17 million since 2002.

Since 2002, we have sold property, scaled back programs, reduced services to our people, laid off staff, delayed needed initiatives, borrowed money, and even put our headquarters and property, property the Church has owned for more than a 150 years, up for sale. There is no Catholic "Superfund" that can provide the monies this legislation will require of the Church. The costs of this legislation would be borne through the loss of services to every parishioner of southeastern Wisconsin. We do not have the resources others may tell you are secretly hidden somewhere. Our financial operations are an open book.

Believe me, I tell you this not for your sympathy -- on this issue the Church neither asks nor deserves it -- but I tell you this because we are at the limit of our ability to pay massive tort settlements. As you know, the result of similar, unfortunate legislation in California, and corresponding settlements reached there in 2006, pushed the Archdiocese of Milwaukee to the brink of bankruptcy; enactment of this legislation again raises that possibility, which would clearly help no one.

I am neither a constitutional expert nor a legal scholar. But I can say that this bill will invite greater litigation against churches and other non-profit groups more than against public sector entities that may have made similar or even worse errors. And, even though you will hear countless protests to the contrary, it is not perpetrators that are held accountable. It is the entire Catholic Church that will be singled out as is clear from the tidal wave of tort actions in states that have dropped the statutes.

Plain and simple, a window is unjust. It will unfairly target churches, especially the Catholic Church, and non-profit agencies.

Jesus taught, "the truth will set you free." Facing the truth of our past personal and institutional horrors has been very difficult. Facing the truth that those failures caused great pain and suffering to innocents has been even more so. None has been more difficult than what victims/survivors and their families have faced.

Staring at that truth head on has made us not only sadder, but also wiser. I want the progress we have verifiably made to continue. Yet, I fear for that progress if the radical law now under discussion takes force.

This drastic law will penalize today's innocent Catholics and others who had no part in what happened. It will damage the Church's ability to be an active servant to those in need of schools, social services, shelters, soup kitchens, Catholic charities and counseling, and the other public goods our faith community carries out every day in collaboration with our neighbors, regardless of their religion, in Wisconsin.

It is for the sake of these good people - and for the good work they do – that I ask you not to approve this bill. I sure appreciate your listening.

###

ARCHDIOCESE OF MILWAUKEE

The Annual Update to the Faithful of Southeastern Wisconsin Regarding the Archdiocesan Response to Sexual Abuse of Minors by Clergy

September 2007

It has been five years since our first archdiocesan *Accountability Statement* was prepared and distributed to every registered Catholic household in the Archdiocese of Milwaukee. This document is intended to be an overview of how the archdiocese addresses the issue of clergy sexual abuse. I have heard from many of you that you appreciate receiving this information, no matter how difficult and painful the topic.

While we know many important steps have been taken to help prevent such abuse from ever happening again, we also know that our work on this issue will never be "over." Rather, we learn every day how we can do things better; how we can work to heal the wounds suffered by all those affected by clergy sexual abuse; how vigilant we must be in protecting not only our children and young people, but all members of our community; and how we can never say "We are sorry" often enough.

Our apology is sincere. We are truly sorry for anyone who suffered the horror of sexual abuse, a violation of everything our Church and the priesthood represent. Over these last five years we have learned how deeply this scandal has affected members of our faith and of our greater community. I thank victims/survivors who have come forward and told their stories, as difficult as it may be. I thank those who work with and on behalf of victims/survivors. I thank those who challenge us to do "more" and "better" in this area. I thank the professional and community leaders who have helped the Church create effective ways to respond to the needs of victims/survivors. I thank those who remain strong in their faith, despite this awful chapter of our history. I thank all those who work every day to ensure that our children and young people are protected.

I invite you to contact me or any member of the archdiocesan staff if you have questions about this information or with suggestions to improve our work in addressing clergy sexual abuse in our Church.

Faithfully in Christ,

+ Timothy M. Dolan

Most Reverend Timothy M. Dolan
Archbishop of Milwaukee

Outreach to Victims/Survivors

The Archdiocese of Milwaukee's outreach to those who have been affected by clergy sexual abuse is coordinated through the Sexual Abuse Prevention and Response Services Office.

Amy Peterson has served as the full-time victim assistance coordinator since fall 2004. In the last three years, she has implemented the archdiocesan response to sexual abuse, met with victims/survivors and their families, managed the archdiocesan prevention and response services, and directed outreach and educational efforts throughout the archdiocese. These activities include:

- Creating an on-line needs assessment to help the archdiocese do a more efficient and effective job of assisting and understanding victims;
- Working with a panel of victims/survivors and sexual abuse service providers to review the outreach provided by the archdiocese;
- Developing ongoing training on mandatory reporting responsibilities for clergy and parish/school staff;
- Providing referral and resource information on a daily basis;
- Coordinating the diocesan-wide outreach campaign, including newspaper advertisements, parish bulletin and school newsletter inserts, and posters;
- Overseeing the re-design of the archdiocesan web site resources so information is easily accessible;
- Working with service providers and victims/survivors to plan a day-long "Day for Healing" for victims/survivors, their families and supporters; and
- Providing sensitivity training for clergy and archdiocesan staff members.

For more information about the Archdiocese of Milwaukee's Sexual Abuse Prevention and Response Services Office, please visit this link – www.archmil.org/saprs .

Supporting Individuals Who Have Experienced Sexual Abuse by Church Personnel

Believing, supporting, and caring for individuals who have experienced sexual abuse by clergy or other Church personnel remains an important pastoral concern for the Archdiocese of Milwaukee. When a person contacts the victim assistance coordinator, a variety of resources are offered, including counseling referrals, spiritual direction, access to mediation, therapy support and other services to assist people who have been abused or who have been affected by abuse.

Meeting with Victims/Survivors

Archbishop Dolan has invited individuals who have experienced or been affected by sexual abuse by clergy, as well as any community member to meet with him and share how the Archdiocese of Milwaukee can effectively address the issue of sexual abuse by clergy or other Church personnel.

Reporting Abuse

Victims/survivors of clergy sexual abuse can make reports to these organizations/agencies throughout southeastern Wisconsin:

- Civil authorities in the city or county where the abuse occurred.
- One of the various agencies that offer free services to sexual abuse victims/survivors. A comprehensive list of these agencies is available at this link – www.archmil.org/CommunityContacts
- The Healing Center at (866) 302-9215.
- The Archdiocese of Milwaukee's Sexual Abuse Prevention and Response Services Office at (414) 758-2232.

The archdiocese requires all adults working for the Church to exercise reporting responsibilities for any suspected physical or sexual abuse of minors, whether or not designated as a mandatory reporter by Wisconsin law.

Safeguarding All of God's Family Program

The Archdiocese of Milwaukee has implemented the *Safeguarding All of God's Family* program to protect children and all family members from sexual abuse and related dangers.

The *Safeguarding All of God's Family* program increases awareness and knowledge of child sexual abuse to prevent any child from suffering this trauma from Church or school personnel, family members, or any adults. All adults who work with children are required to participate in this program and become familiar with the warning signs of abuse, learn strategies for handling suspicions of abuse, and identify ways to respond to abuse.

Archdiocesan, parish and school staff, as well as volunteers who regularly interact with minors, participate in a three-hour "Protecting God's Children" Safe Environment Education session. Criminal background checks are completed for all adults who have regular interaction with minors. A quarterly newsletter with safe environment information is produced and distributed to all parishes and schools in the archdiocese. Age-appropriate abuse prevention education materials are incorporated into Catholic school and religious education instruction.

Since the inception of the *Safeguarding All of God's Family* program, more than 28,000 people have attended training sessions. Children's Hospital of Wisconsin offers training sessions on mandatory reporting requirements that are available to staff members and volunteers.

Patti Loehrer is the archdiocese's full-time coordinator for the *Safeguarding All of God's Family* program. To date, the Archdiocese of Milwaukee has spent more than $156,000 on the creation and implementation of the *Safeguarding All of God's Family* program.

For more about the Archdiocese of Milwaukee's *Safeguarding All of God's Family* program, please visit this link – www.archmil.org/safeguarding .

Independent Clergy Sexual Abuse Mediation System

Recognizing the need for a process outside the archdiocesan structure to address claims of sexual abuse of a minor by diocesan clergy, an independent, voluntary mediation system was introduced in January 2004. The system was created in collaboration with Eva Soeka, the director of Marquette University's internationally-acclaimed Center for Dispute Resolution.

To date, the archdiocese has reached resolution with nearly 160 individuals through the independent mediation system.

For all cases in which no prior reports had been made to the Archdiocese of Milwaukee about a clergy member who is still alive, the appropriate county's district attorney was contacted with information.

The independent mediation system administrator can be contacted at (414) 217-0500.

Archdiocese of Milwaukee Fully Compliant with USCCB *Charter for the Protection of Children and Young People*

Three outside, independent, professional audits have shown the Archdiocese of Milwaukee to be in full and complete compliance with the United States Conference of Catholic Bishops (USCCB) *Charter for the Protection of Children and Young People*, adopted by the U.S. Bishops in June 2002.

The compliance audits were coordinated by the USCCB National Review Board and assessed how Catholic dioceses throughout the nation performed in their efforts to integrate the *Charter*'s standards into their administration. The Compliance Audit examined the four main sections of the *Charter*:

- Promoting healing and reconciliation;
- Guaranteeing effective response to allegations of sexual abuse of a minor;
- Ensuring accountability of procedures; and
- Protecting the faithful in the future.

The audits affirmed the archdiocese's "Additional Actions to Protect Children" believed to exceed and/or enhance the requirements of the *Charter*, including:

- the Independent Mediation System
- the Community Advisory Board

The archdiocese also was recognized for its foresight in implementing an outreach program to victims/survivors in 1989 and for establishing the Eisenberg Commission in 2002 to review policies and procedures related to clergy sexual abuse.

Distribution of Names and Status Updates of Priests

In July 2004, the Archdiocese of Milwaukee published and distributed the names of diocesan priests of the archdiocese who have been (or would be if they were still alive) restricted from all priestly ministries, may not celebrate the sacraments publicly, or present themselves as priests in any way because of substantiated reports of sexual abuse of a minor. This information remains available at this link – www.archmil.org/July2004news – and is updated as necessary.

In accordance with the canonical norms that have been established, the allegations against any living priest are sent to the Vatican's Congregation for the Doctrine of the Faith. Since the *2006 Accountability Report*, one additional priest against whom there was a substantiated report of sexual abuse of a minor was laicized.

Canonical (Church) Trials

Priests against whom there are substantiated reports of sexual abuse of a minor may be subject to various canonical processes, including a canonical trial.

It is the responsibility of the Archdiocese of Milwaukee's Metropolitan Tribunal to conduct canonical trials when it is believed that, under canon law, crimes may have been committed. These are church trials, as opposed to civil trials that may carry jail terms or other penalties. A full investigation is conducted to determine if a canonical trial is warranted.

A canonical trial consists of testimony by parties and witnesses, as well as deliberation by the ecclesiastical (Church) judges. A decision may result in canonical penalties against the clergy member. The decision and penalties of the diocesan court can be appealed to the Vatican's Congregation for the Doctrine of the Faith.

More information about canonical trials is available at this link – www.archmil.org/canonicaltrials

Priests who are Members of Religious Orders

The Archdiocese of Milwaukee requires the following from religious orders whose members minister within the archdiocese:

- A copy of the religious order's policy on its response to sexual abuse must be provided to the archdiocese before any of its members can minister within the archdiocese.
- The superior of each religious order must provide the archdiocese with written documentation that no substantiated reports of sexual abuse of a minor exist against any individual seeking to minister within the archdiocese.

National Review Board

The National Review Board was established in 2002 to collaborate with the USCCB in preventing sexual abuse of minors in the United States by persons in the service of the Church.

Diane Knight, retired Executive Director of Catholic Charities of the Archdiocese of Milwaukee, was appointed to the 12-member Board in 2007. She serves on the archdiocesan Community Advisory Board, which advises Archbishop Dolan and the archdiocesan Victim Assistance Coordinator. She also serves on the Code of Ethics Task Force of Catholic Charities USA.

Diocesan Review Board

The Diocesan Review Board, which oversees the Archdiocese of Milwaukee's response to clergy sexual abuse, was appointed by Archbishop Dolan and has met regularly since January 2003.

Members include:

- *Dr. Josefina Castillo Baltodano,* President, Marian College, Fond du Lac
- *Rev. James Connell*, an Archdiocese of Milwaukee priest
- *Margaret Farrow*, a former Wisconsin Lieutenant Governor
- *Rev. Donald Hands*, an ordained Episcopal priest and psychologist-supervisor at the Milwaukee Secure Detention Facility
- *Dr. Anthony Kuchan*, a licensed psychologist and retired Marquette University assistant professor of psychology
- *Dr. Charles Lodl*, a clinical psychologist
- *Stephanie Russell*, Marquette University's Executive Director of Mission and Identity

The Board's mandate is to:

- Assess allegations of sexual abuse of minors;
- Provide counsel regarding suitability for ministry;
- Review diocesan policies for dealing with sexual abuse allegations to ensure they are in compliance with the promises made in the USCCB *Charter for the Protection of Children and Young People*; and
- Offer counsel on all aspects of sexual abuse cases, whether retrospectively or prospectively.

Community Advisory Board

The Community Advisory Board reviews and improves the response of the Archdiocese of Milwaukee to those who have experienced or been affected by sexual abuse by Church personnel. The Board also makes recommendations to the Diocesan Review Board.

Members of the Board include victims/survivors of clergy sexual abuse, victim advocates, professional psychologists and therapists who work with sexual abuse victims and/or perpetrators, and members of the archdiocesan staff.

Community Advisory Board members are:

- *Cathy Arney*
- *Carol Cichon*
- *Al Castro*
- *Maryann Clesceri*
- *Kathy Coffey-Guenther, Ph.D*
- *Barbara Anne Cusack*
- *Archbishop Timothy Dolan*
- *Kimberly Goins*
- *Sr. Mary Howard Johnstone*
- *Rev. Charles Keefe*
- *Marie Kingsbury*
- *Diane Knight*
- *Dr. Anthony Meyer*
- *Jill Maria Murdy*
- *Amy Peterson*
- *Mariana Rodriguez*
- *Auxiliary Bishop Richard Sklba*
- *Sharon Tarantino*
- *Kathy Lyn Walter*

Clergy Sexual Abuse Lawsuits

The Archdiocese of Milwaukee's response to the issue of clergy sexual abuse includes a legal aspect.

In July 2007 the Wisconsin Supreme Court issued a ruling regarding four cases involving the archdiocese. The Court both agreed and disagreed in part with previous circuit and appellate court rulings. The Court ruled negligent supervision claims had been properly dismissed, but determined fraud claims should be returned to Milwaukee County Circuit Court for further processing. Our legal counsel is in the process of preparing information as part of this next step in the legal process.

As the legal process continues, updated information will always be accessible on the archdiocesan web site – www.archmil.org.

Financial Impact of Clergy Sexual Abuse

During the fiscal year from July 1, 2006, to June 30, 2007, the financial impact of sexual abuse cases involving a diocesan clergy member and a minor was $10,737,670.57 after reimbursements from insurance for mediation agreements and attorney fees of $9,856,587.93. This includes $9,518,114.72 for therapy-related and victims/survivors assistance costs, including mediation agreements; $41,785.58 for mediator fees for mediation; and $1,177,770.27 for general attorney fees and other expenses. The general attorney fees included amounts spent on cases involving litigation and litigation against insurance companies.

Through June 30, 2007, the financial impact to the Archdiocese of Milwaukee of the clergy sexual abuse issue involving a diocesan priest and a minor was $24,928,062.

Gifts to the Catholic Stewardship Appeal or the Faith In Our Future campaign are not used for settlements with victims/survivors of clergy sexual abuse. These expenses were paid for by monies accumulated in the Properties and Building Fund and from insurance reimbursements. The annual Catholic Stewardship Appeal funds pastoral ministries that impact the lives of nearly 675,000 members of the Catholic Church of southeastern Wisconsin.

Conclusion

This report is a reaffirmation of the Archdiocese of Milwaukee's public commitment to addressing issues related to clergy sexual abuse. Working together with a sense of openness, truthfulness, responsiveness, and engagement, trust can be restored and maintained and the Church can be strengthened.

We continue to pray for healing for all those who have suffered as a result of this crisis and ask that you continue to pray for the Church of southeastern Wisconsin.

WISCONSIN CATHOLIC CONFERENCE

ISSUE

LAWSUITS INVOLVING SEXUAL ASSAULTS OF CHILDREN

Pending legislation, Senate Bill 356 and Assembly Bill 651 will remove the statute of limitations for child abuse cases and introduce a three-year "window" to permit suits for cases where the statute of limitations has already expired. For a number of reasons, this is undesirable public policy.

BACKGROUND

Statutes of limitations provide that a criminal prosecution or civil lawsuit must occur within a specified time period after the crime is committed or the injury is caused.

Several years ago, California enacted what has come to be called a "window" proposal. This law created a one-year grace period or "window" during which victims of sexual abuse could bring lawsuits against those responsible for the abuse, no matter how long ago the abuse occurred. The effect of this window was to permit the revival of claims barred by the statute of limitations in California. As a result of this window, victims' attorneys filed hundreds of lawsuits against the archdioceses and dioceses of California, resulting in payments of more than one billion dollars.

Since the California law was adopted other states have been asked to enact a similar law.

Wisconsin Bills

Senate Bill 356 and Assembly Bill 651 are identical and each does the following: 1) open a three-year window during which anyone who was sexually assaulted as a child can bring a civil lawsuit against those responsible for the assault, including the employer of the perpetrator, if the assault occurred in part because the employer was negligent; and 2) completely remove the statute of limitations for future civil actions not already time barred.

WCC POSTION

For several reasons, the Wisconsin Catholic Conference is opposed to the bills.

Statutes of limitations serve a purpose. Statutes of limitations exist for good reason in our justice system. They secure the swift and accurate administration of justice and do so by insuring that prosecution and civil litigation occur in a timely manner. Statutes of limitations force the relevant parties to collect evidence and obtain witness testimony while both are still fresh and uncorrupted by time and/or undue influence. In removing all time limits for future cases and in allowing for suits for abuse that occurred decades ago, these bills go too far.

A window by itself will not benefit all victims equally. As drafted, these bills have an unequal and unfair impact on different institutions, depending upon whether they are public or private entities. Current law caps liability of state agencies at $250,000 per personal injury. Liability for municipal

bodies, such as school districts, is capped at $50,000 per person. Liability of private or non-profit entities, such as parochial schools, is not capped. The bills do not change these caps.

For example, a parochial school system might find itself liable for millions of dollars because of one case. On the other hand, the $50,000 cap protects the neighboring public school district. Thus victims in nearly identical situations will get vastly different settlement amounts. It also means a church or non-profit agency may have to pay more than a government agency who was even more at fault for actions of its employee.

Opening a window for old claims can have a devastating impact on churches and other non-profit entities. Parishioners and those served by churches and non-profit groups of today are not responsible for any mistakes made dealing with child abusers decades ago. But they will suffer if a large damage award devastates their church or agency. They should not be burdened with the liability for the actions of others in the distant past.

A former AG deemed a window constitutionally flawed. When the legislature considered the idea of a window in 2004, then-Attorney General Peg Lautenschlager advised legislators that a proposal to revive claims after a statute of limitations has expired was constitutionally flawed. That advice is as valid today as it was then.

The legislature lengthened the statute of limitations in 2004. In 2004, the legislature increased the statute of limitations and allowed for civil actions to be brought against alleged child abusers up until the victim turns 35 years of age. The Wisconsin Catholic Conference fully supported that proposal.

The Catholic Church remains committed to the health process. The Catholic Church is committed to assisting victims of abuse through the healing process that will help them to repair and rebuild their lives. To this end, the Archdiocese of Milwaukee has reached settlements (which include monetary compensation for therapy) with over 160 sexual abuse survivors whose claims were time barred and could not be resolved in court. That process remains open to any who wish to use it.

ACTION REQUESTED

Write your legislators and urge them to oppose SB 356 and AB 651.

As you make the points discussed above, please emphasize that the **Catholic Church remains committed to the healing process.**

Independent Mediation System Overview

- Introduced in January 2004 to meet the needs of victims/survivors of clergy sexual abuse in the Archdiocese of Milwaukee. The independent mediation system replaced a pastoral mediation process that was coordinated by archdiocesan staff members.

- The system was created and is administered by Eva Soeka of Marquette University's Center for Dispute Resolution.

- The system is based on the fundamental principles of accessibility, responsiveness and healing and attempts to span the chasm between victims/survivors and the Catholic Church.

- More than 160 victims/survivors have reached resolution with the Archdiocese of Milwaukee through the independent mediation system.

- A flow chart detailing the mediation process is available on the reverse side of this page and on the archdiocesan web site - http://www.archmil.org/aboutus/ShowResource.asp?ID=1418

- Mediation system investigators and mediators are not employees of the Archdiocese of Milwaukee, but are compensated by the archdiocese.

- Monies to fund the mediation system were generated by the sale of archdiocesan properties. The cost to date of mediation exceeds $17 million, dating back to 2002.

1926 Cty Rd. C Somerset
Joseph Bilgrien

My name is Joseph I. Bilgrien – I live in Somerset Wisconsin. I was an active Catholic priest for 22 years – I decided ti marry in 1988 and as a result of that choice I became an inactive Catholic Priest. Since that time, I have worked as a psychotherapist doing individual, marriage and family counseling. I worked half time for the University of MN Medical Center – Fairview and half time for Lutheran Social Services in Wisconsin. I was licensed in MH and WI – MA in psychotherapy. Marriage and Family Therapist and Independent Clinical Social Worker. I retired in Dec 07

What I now relate to you comes from my experience in working with people in therapy. At least one third of the females I worked with had been sexually abused – at least one fourth of the males I worked with had been sexually abused. I would suspect that in the general population the incidence of sexual abuse would be higher.

I commend you and support the bill you are attempting to pass. If I had my way, there would be no statute of limitations in cases of sexual abuse for the following reasons:

What happens to persons who are sexually abused?
Their self esteem is shattered – they don't like themselves and think that others including God don't like them they live with that day in and day out
Trust – faith and spiritual values are shredded
They feel extreme betrayal and hurt which they turn into anger and now they need to heal the betrayal, hurt and anger
They suffer extreme shame because they are taught to be responsible for the actions of the perpetrator.
Sexual development and psycho-social growth are stunted and shredded – and some who have been abused will in turn abuse others and some will continue to be abused by others
Two symptoms that we don't hear much about are 1) because the sexual mechanism is put in motion, even though there is horrific pain – there is also some element of pleasurewhich is extremely confusing. 2)The abused feel powerless in relation to the abuse and they will keep looking for ways to have control and power which become des in their livestructive

Many times the abused person will suffer other emotional , multiple problems. Added to the problems of the sexual abuse they could also suffer from Post Traumatic Stress Disorder, Depression, Panic or Anxiety Attacks. Suicidal ideation and attempts. Paranoid feelings,Personality Disorder, Bi-Polar, Dissociative disorders and Psychotic Disorders. I am suggesting that when somebody is sexually abused there are other major problems involved as well..

Many people suffer for years and decades trying to deal with some or a combination of the issues I just mentioned – because of that their work, marriage, parenting, other relationships all suffer. Most people will not heal the issues without outside help. Shame also keeps people from seeking help. Many people push down the feelings but they continue to work inside the person like a pressure cooker .
Two stories – Person no 1 came in at age 54 = sexually abused as a child – this person suffered from depression, suicidal ideation and attempts, Bulimia eating disorder and multiple personality disorder
Person no 2 – Age 14 – sexually abused by a parent – living in foster care – anytime the parent calls to visit Person no 2 curls up in the fetal position and ends up in the hospital

One other example – because the sexual abuse we oral – the person has a difficult time in going to a dentist – this person get flashback to the sexual abuse

I am not sure that most of us understand the horrific nature of abuse - suffering that I would dare say that anyone who opposes this bill has something to hide and enables sexual abuse to continue. We need to listen to the abused person and find ways to protect them and help them to heal – we also need to hold the abuser responsible and see that they receive help. If we do not help the a bused and don't hold the abuser responsible. We enable the cycle of abuse to continue

People for the - Length of time to heal

Wisconsin Council of Churches

750 Windsor Street, Suite 301 Sun Prairie, WI 53590-2149
Ph 608.837.3108 Fax 608.837.3038 E-mail wcoc@wichurches.org

Assembly Committee on Children and Family Law
January 24, 2008
Testimony in opposition to AB 651
Scott D. Anderson, Executive Director
Wisconsin Council of Churches

Representative Owens and committee members:

My name is Scott Anderson. I am the Executive Director of the Wisconsin Council of Churches, which includes 13 Protestant and Christian Orthodox denominations—including the Evangelical Lutheran Church in America (the largest Protestant body in Wisconsin), the Episcopal Church, the United Methodist Church, the United Church of Christ, the Presbyterian Church (USA) the American Baptist Churches, and others. Together we comprise almost 2,000 congregations throughout Wisconsin.

The protection of our children is not just a matter of codifying legal responsibilities. This is a much higher calling. For those of us in the religious community, we view children as God's most precious creation. Their care, their nurture, their well being, and their protection from harm is a task entrusted to us by God. We are thoroughly committed to that calling.

It's important for me to note that the major Protestant denominations have implemented a series of measures over the last two decades to educate our clergy about child sexual abuse and to set up effective internal mechanisms of accountability, including criminal background disclosures of candidates for the ministry. We have established standards of ethical conduct for our members, employees, and volunteers, as well as for those who serve in ordained office. We have codified disciplinary processes to be followed when a breach of ethical conduct has occurred.

We support legal remedies for victims of child sexual abuse. In 2004, by significant bipartisan majorities, both houses of this legislature passed legislation that now permits a victim to pursue justice against a member of the clergy, and permits a victim to pursue justice against the employing religious organization. We supported that legislation.

As part of that same legislation in 2004, the statute of limitations was extended from 21 to 35 years of age for civil cases. We, along with the other major religious organizations in the state, supported this extension.

At the time we recognized that the law in 2004 was inadequate with the respect to the Statute of Limitations concerning child abuse that has

--over--

TESTIMONY OF CARY SILVERMAN, ESQ.
SHOOK, HARDY & BACON L.L.P.
600 14TH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005

ON BEHALF OF THE
AMERICAN TORT REFORM ASSOCIATION

REGARDING H.B. 651:
AN ACT REMOVING THE STATUTE OF LIMITATIONS
AND REVIVING TIME-BARRED CLAIMS

BEFORE THE WISCONSIN HOUSE COMMITTEE ON
CHILDREN AND FAMILY LAW

JANUARY 24, 2007

Chairwoman Owens and Members of the Committee, on behalf of the American Tort Reform Association ("ATRA"), I want to thank you for allowing me to testify before you today in regard to H.B. 651, which would eliminate the statute of limitations and revive time-barred claims.

I am an attorney in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. Most of our firm's practice generally involves representing corporate defendants in multi-state litigation. I have written extensively on liability law and civil justice issues. I am a graduate of George Washington University, where I graduated with honors with degrees in law and public administration. I graduated from the State University of New York College at Geneseo with a B.S. in Management Science.

I serve as co-counsel to ATRA, a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Sexual abuse against a child is intolerable and should be punished, both through criminal prosecution and civil claims. I commend the Committee for considering steps to further protect victims of sexual abuse. My testimony today addresses only general principles underlying statutes of limitations, as well as the reasons why retroactive

changes to such laws are often view as unconstitutional and unsound policy by courts and legislatures.

Statutes of Limitations: An Overview

Tort law, by its very nature, deals with horrible injuries stemming from sometimes horrible acts. It provides a mechanism for recovery for the person who is permanently disabled or maimed due to a negligent act or a defective product; for the person who contracts a painful, terminal disease due to negligent exposure to a toxic substance; and for the person who is injured at birth and will have mental and physical problems for the rest of his or her life due to medical malpractice. All of these situations have victims. All have lifelong injuries. All are heart wrenching. And all are subject to a finite statute of limitations.

Statutes of limitations are basically a legal "countdown" that begins when someone is injured. When the time period expires, a claim may no longer be brought.

In Wisconsin, personal injury and wrongful death claims must generally be brought within three years. Wis. Stat. § 893.53. Medical malpractice claims must be brought within three years of the date of injury or one year from discovery of the injury, but not more than five years from the date of the act. Wis. Stat. § 893.55(1m). There is a two-year statute of limitations for claims involving intentional torts, such as libel, slander, assault, battery, and invasion of privacy. Wis. Stat. § 893.57. Contract and property claims are subject to a six-year limitations period. Wis. Stat. §§ 893.43, 893.52. These laws reflect a legislative judgment that a two, three, or six year period provides claimants in these actions with an adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them.

Generally, when a child is injured, Wisconsin law provides him or her with two years after turning 18 to bring a claim (until age 20). Wis. Stat. § 893.16(1). In the case of childhood sexual abuse, the legislature decided in 2004 to provide significantly more time: until age 35, 15 years longer than for other types of claims. Wis. Stat. § 893.587. It is an amount of time significantly longer than the statute of limitations applicable to child sexual abuse claims in most other states.

Why Do We Have Statutes of Limitations?

There's no magic number as to what is a fair length of time for a statute of limitations. They are inherently arbitrary. Yet, statutes of limitations are important because some period is needed to balance an individual's ability to bring a lawsuit with the ability to mount a fair defense and to protect courts from stale or fraudulent claims. As time passes, witnesses become difficult to locate or pass away, records are lost or discarded, and memories fade. Without statutes of limitations, litigation can become a "he said-she said" situation.

As legislators, you must strike a difficult balance. On the one hand, potential plaintiffs should have an adequate opportunity to bring a claim. On the other hand, defendants and the courts must be protected from having to deal with cases in which the search for the truth may be seriously impaired by the loss of evidence, witnesses, and fading of memories. By striking this balance, statutes of limitations promote justice, discourage unnecessary delay, and preclude the prosecution of stale or fraudulent claims. These laws are essential to a fair and well-ordered civil justice system. The possibility of an unfair trial is heightened when heart-wrenching allegations are involved.

In addition, statutes of limitations also provide predictability and certainty to the business community as well as nonprofit organizations. It allows them to accurately gauge their potential liability and make financial and insurance coverage decisions accordingly.

H.B. 651 Goes Too Far

H.B. 651 would eliminate the statute of limitations entirely, an action unprecedented in Wisconsin civil law. It would subject organizations to an indefinite threat of liability.

While the legislation may not target any particular group or institution, as a practical matter, the effects are more likely to be felt by nonprofit and private organizations that serve children, and religious institutions, than the perpetrators themselves. That is because when a lawsuit is brought after such a length of time, the perpetrator may already be dead, or, if he was an employee of an organization, may not be able to be found. Perpetrators may also be judgment proof (have no money to pay claims). In any event, a nonprofit organization, business, or religious institution is more easily identifiable and more likely to have financial resources, and for this reason,

attorneys working on a contingency fee will naturally name them as defendants. These defendants will have a very difficult time in court. Their employees from that period may be gone, their records may be gone, and their institutional memory may be gone – this is precisely the reason for statutes of limitations.

The proposed legislation exacerbates the problems with abolishing the statute of limitations by doing so *retroactively*. In so doing, the legislature would permit expired cases, no matter how many years ago they occurred, to be filed within three years of enactment. There are three compelling reasons not to do so.

First, *retroactively* abolishing all limitations in this instance would create a dangerous precedent with adverse consequences for other types of defendants in Wisconsin. As I discussed earlier in my testimony, statutes of limitations are inherently arbitrary and there are many situations in which they can be perceived as unfair. Tort law deals with many horrible accidents with injuries that last a lifetime. For example, legislation is pending in Alabama that would revive toxic tort claims that have expired under the state's statute of limitations.

Second, retroactively changing a statute of limitations throws a core rule of law up in the air. One of the principle purposes of a statute of limitations is to provide a period when the risk of a lawsuit ends. As the Florida Supreme Court has found, "retroactively applying a new statute of limitations robs both plaintiffs and defendants of the reliability and predictability of the law." *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994).[1] Predictability and certainty is important for nonprofit organizations and businesses in their decision making. For example, nonprofit employers may have purchased insurance or more insurance had they known that they could be subject to lawsuits for an indefinite period of time.

---

[1] In the criminal context, the Supreme Court of the United States recently held that a new statute of limitations enacted in California that allowed prosecutions based on sexual abuse of minors for which the statute of limitations had already expired so long as the victim makes a report to the police within one year of enactment violated the Ex Post Facto Clause of the United States Constitution. *See Stogner v. California*, 539 U.S. 607 (2003). The Supreme Court's consideration of the practical effect of resurrecting prosecutions after the relevant statute of limitations has expired is instructive. *Id.* at 613-18, 631-33. The Supreme Court found that in such a situation "the government has refused to play by its own rules," has deprived the defendant of "fair warning," and, quoting Justice Learned Hand, found that "extending a limitations period after the State has assured a man that he has become safe from pursuit seems to most of us unfair and dishonest." *Id.* at 607-08 (internal alterations and quotations omitted).

Third, retroactively eliminating a statute of limitations to "revive" expired claims is unconstitutional. For well over a century, the Wisconsin Supreme Court has recognized retroactively changing statutes of limitations to revive expired claims violate the vested rights of defendants. These cases deal with the precise issue posed by H.B. 651's reviver clause. Each and every time, the Wisconsin Supreme Court, in no uncertain terms, has found that the running of the statute of limitations is absolute and cannot be changed by subsequent legislation without violating due process rights:

- "[I]f the time limited for commencing a suit expires while the statute is in force and before the suit is brought, the right to bring the suit is barred, and no subsequent statute can renew that right."
  Sprecher v. Wakeley, 11 Wis. 432, 439 (1860).

- "The bar created by the statute of limitations is as effectual as payment or any other defense, and once vested cannot be taken away even by the legislature. That is the doctrine of this court expressed in many cases."
  Eingartner v. Illinois Steel Co., 103 Wis. 373, 376 (1899) ((quoting *Woodman v. Fulton*, 47 Miss. 682 (1873)).

- "Under our system the statute of limitations does not act merely on the remedy. It extinguishes a right on one side and creates a right on the other which is as high dignity as regards judicial remedies as any other; a right entitled to constitutional protection."
  Laffitte v. City of Superior, 142 Wis. 73, 109 (1910).

- "In Wisconsin[,] the running of the statute of limitations absolutely extinguishes the cause of action. . . ."
  Maryland Cas. Co. v. Beleznay, 245 Wis. 390, 393 (1944).

- "If a statute of limitations extinguishes the right as well as the remedy, then a statute which attempts to reinstate a cause of action that has been barred is constitutionally objectionable under the foregoing rule. This is because the statute seeks to impose a new duty or obligation even though none existed when the retrospective statute was enacted."
  Haase v. Sawicki, 20 Wis.2d 308, 312 (1963).

- "[A] statute which attempts to revive or reinstate a cause of action that is barred is constitutionally objectionable because a retroactive extension of the period of limitations after its expiration amounts to a taking of property without due process of law. . . . Clearly, once a statute of limitations has run, the party relying on the statute has a vested property right in the statute-of-limitations defense, and new law which changes the period of limitations cannot be applied retroactively to extinguish that right." *Borello v. U.S. Oil Co.*, 130 Wis.2d 397, 415-16 (1986).

What each of these court decisions recognize is that just as the legislature cannot suddenly shorten a statute of limitations to eliminate a plaintiff's vested right to sue, it cannot revive expired claims and eliminate a defendant's vested defense that a claim is time barred. See Wis. Stat. § 893.05 (codifying the constitutional principle that "[w]hen the period within which an action may be commenced on a Wisconsin cause of actionhas expired, the right is extinguished as well as the remedy"). For example, consider the outcome if the legislature decided that it made the wrong decision four years ago in setting the statute of limitations at age 35, not 25, in childhood sexual abuse cases, and reduced the period to 25 retroactively resulting in a 30-year-old, who thought he had five more years to sue, without a claim. That law would likely be found unconstitutional. *See Hunter v. School Dist. Gale-Ettrick-Trempealeau*, 97 Wis.2d 435, 441, 447 (1980) (finding it unconstitutional for the legislature to retroactively amend a statute of limitations to bar a plaintiff's cause of action for negligence that accrued prior to the amendment because the plaintiff had a vested right and an amendment "would have the effect or destroying or terminating that right"). The same principle applies equally to a law that would change the rules midstream to take away an organization's defense.[2]

Some states have found reviver statutes unconstitutional based on an explicit constitutional provision precluding retroactive laws.[3] Many others, like the Wisconsin

---

[2] Those who argue that the reviver clause is constitutional and suggest a balancing test would permit a court to revive expired claims rely on cases that did not involve a retroactive change to a statute of limitations. Moreover, some of the cases relied upon by proponents actually found retroactive changes to the vested rights of both plaintiffs and defendants *unconstitutional*. *See, e.g., Neiman v. Am. Nat'l Prop. & Cas. Co.*, 236 Wis.2d 411, 424-25 (2000) (retroactive increase of damages available in wrongful death cases from $150,000 to $500,000 is unconstitutional, noting that defendants could have purchased greater liability insurance had they known of greater than anticipated liability); *Martin v. Richards*, 192 Wis.2d 156, 200-01 (1995) (retroactive cap on noneconomic damages violated due process; and noting that "because retroactive legislation presents unique constitutional problems in that it often unsettles important rights, it is viewed with some degree of suspicion and must be analyzed within a framework different than that of prospective legislation"). Other cases relied upon by proponents involve purely procedural changes that did not impacting a right or a remedy, *see City of Madison v. Town of Madison*, 127 Wis.2d 96, 102 (1985) (retroactive change to procedure for town to incorporate), or involved a minor retroactive tweak to a law that only weakly impacted the challenger's settled expectations and property rights, *see Paternity of John R.B.*, 277 Wis. 378, 397-98 (2005) (retroactive change to credit permitted against child support due required father to pay an additional $30 per month).

[3] *See, e.g., Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341 (Mo. 1993) (en banc); *Gould v. Concord Hospital*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Baker Hughes, Inc. v. Keco R&D, Inc.*, 12 S.W.3d 1, 4 (Tex. 1999).

Supreme Court, have relied on the basic protections of the Due Process Clause of the state's constitution.[4]

For these reasons, almost all states that have considered proposals similar to H.B. 651 in recent years have rejected them, except for California and Delaware. State legislatures in Maryland and New Jersey have decided against eliminating statutes of limitations in sexual abuse cases. In addition, state legislatures have refused to retroactively change the law in Colorado, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Pennsylvania, New York, and Ohio. Recognizing the unfairness of changing rules mid-stream, the extreme difficultly for organizations who are not directly responsible for the abuse to defend themselves against decades-old allegations involving teachers or clergy where witnesses and records are long gone, the bad precedent it sets for other types of lawsuits, and the questionable constitutionality of such laws, most states have not followed in the footsteps of California.

In sum, if the legislature begins down the path of eliminating settled rules in particular situations, Wisconsin citizens could be left with a patchwork legal system that is chaotic, permits unverifiable claims, and may create insurability problems for businesses, associations, and other potential civil defendants.

There are less extreme options that are constitutional and sound policy. If the legislature feels that permitting claims until the person turns 35 is insufficient, then it might consider adding a rule permitting such claims within two years of when the victim discovers, or reasonably should have discovered, the abuse. Any such change should be prospective in nature, applying only to future claims.

I thank the Committee for the opportunity to testify today and would be pleased to answer any questions.

---

[4] *See, e.g., Waller v. Pittsburgh Corning Corp.*, 742 F. Supp. 581, 583 (D. Kansas 1990) (citing numerous decisions); *M.E.H. v. L.H.*, 685 N.E.2d 335, 339 (Ill. 1997); *Kelly v. Marcantonio*, 678 A.2d 873, 882-83 (R.I. 1996); *Starnes v. Cayouette*, 419 S.E.2d 669, 673 (Va. 1992); *see also Perez v. Richard Roe 1*, 52 Cal.Rptr.3d 762 (Cal. App. 2 Dist. Dec. 27, 2006) (No. B182814), as modified (Jan. 26, 2007), review denied (Apr. 11, 2007) (ruling that it was a violation of the separation of powers for the legislature to revive actions that the judiciary had already dismissed as time-barred under the statute of limitations that previously existed).

Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Phone • (608) 257-9521
Fax • (608) 283-1709

Richard L. Bolton
Direct Dial Number • (608) 283-1789
rbolton@boardmanlawfirm.com

BOARDMAN LLP
LAW • FIRM

January 24, 2008

To: The Assembly Committee on
Children and Family Law

RE: Assembly Bill 651
Relating to Statute of Limitations for
Sexual Contact With a Child

Dear Representative Owens and Committee Members:

In 2004, the Wisconsin Legislature passed legislation allowing for civil actions to be brought against alleged child abusers up until the victim turns 35 years of age. The Wisconsin Council of Churches supported that legislation. Now, however, the Senate is considering a Bill that would remove any time limit for bringing such actions. Under the Bill being considered, there is no limit on the time a person has to bring an action for injury resulting from being subjected, as a child, to sexual contact by an adult or by an adult member of the clergy. The Bill also, significantly, would revive any cause of action that was barred by the present statute of limitations, and the Bill allows an injured party to bring that action for his or her injury for three years after the effective date of the Bill. This provision of the proposed legislation would almost certainly fail a constitutional challenge.

In Wisconsin, the running of a statute of limitations absolutely extinguishes the cause of action, for in Wisconsin, limitations are not treated as statutes of repose. "The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards judicial remedies as any other right, and it is a right which enjoys constitutional protection." Maryland Casualty Company v. Belezney, 245 Wis. 390, 393, 14 N.W. 2d 177 (1977).

In Borello v. U.S. Oil Company, 131 Wis.2d 397, 415-16, 388 N.W.2d 140 (1986), the Wisconsin Supreme Court further recognized that "a statute which attempts to revive or reinstate a cause of action that is barred is constitutionally objectionable because a retroactive extension of the period of limitations after its expiration amounts to a taking of property without due process of law. Clearly, once a statute of limitations has run, the party relying on the statute has a vested

property right in the statute of limitations defense, and a new law which changes the period of limitations cannot be applied retroactively to extinguish the right."

A statute of limitations is substantive in effect in this State, unlike in some other states. In some states, a statute of limitations merely extinguishes a plaintiff's remedy, but "this was not and is not the law in Wisconsin. In Wisconsin, we adopted the proposition that the limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other side." Wenke v. Gehl Company, 274 Wis.2d 220, 257-58, 682 N.W.2d 405 (2004). Wisconsin limitations periods, therefore, are more than merely statutes providing "repose," which would not be substantive in effect. Id.

Wisconsin's substantive approach to statutes of limitations is constitutionally grounded. In Haase v. Sawicki, 20 Wis.2d 308, 311-12, 121 N.W.2d 876 (1963), the Supreme Court concluded that once a defendant was past the time for potential liability by the running of a statute of limitations in a civil suit, the Legislature could not retroactively extend that period of limitations, and to do so would subject the defendant to liability without due process of law in violation of the Constitution of the United States. See also Heifetz v. Johnson, 61Wis2d 111, 117, 211 N.W.2d 834 (1973). The expiration of a statute of limitations does more than merely close the door of the courthouse in Wisconsin. Wojtas v. Capital Guardian Trust Company, 477 F.3d 924, 927 (7th Cir. 2007).

The United States Supreme Court also has recognized the unconstitutionality of reviving causes of action that have already been extinguished. As long ago as 1925, the Supreme Court held in Danzer & Co. v. Gulf & Ship Island Railroad Company, 268 U.S. 633, 636-37 (1925), that to revive an action that has been barred by the running of a statute of limitations "would be to deprive defendant of its property without due process of law in contravention of the Fifth Amendment." See also Hughes Aircraft Company v. United States, 520 U.S. 939, 950 (1997) (a newly-enacted statute that lengthens an applicable statute of limitations may not be applied retroactively to revive a plaintiff's claim that was otherwise barred under the old statutory scheme, because to do so would alter the substantive rights of a party).

The reasoning of the Wisconsin Supreme Court and the United States Supreme Court is supported by the logic of fairness which dictates that "any liable party must have the right to be free of stale claims after a reasonable amount of time has passed." Stone & Redell v. Hamilton, 308 F. 3d 751, 750 (7th Cir. 2002). Extending a statute of limitations after the pre-existing period of limitation has expired impermissibly revives a moribund cause of action. Id.

The interest that Courts protect is not the interest of wrong-doers in avoiding responsibility. The concern is to protect the integrity of the judicial process as to claims where evidence cannot reasonably be obtained because of the long passage of time. The interests of

victims must also be balanced, of course, which the legislature just recently did in 2004 by enacting a statute of limitations that extends until a victim's 35th birthday.

The current proposed legislation would prospectively eliminate any statute of limitations, which the legislature constitutionally can do because vesting of rights accrues only when an existing period of limitations has run in its entirety. Borello v. U.S. Oil Company, 130 Wis. 2d 397, 416, 388 N.W.2d 140 (1986). As to those claims where the statute of limitations has run in its entirety, however, the law is clear that such claims cannot be retroactively revived, consistent with the Constitution.

The Wisconsin Attorney General has agreed that reviving expired causes of action probably would not survive constitutional challenge. This issue was previously considered in 2003, when Attorney General Lautenschlager wrote to the Honorable Peggy Krusick, Wisconsin State Assembly. She stated that "the Wisconsin Supreme Court has been reluctant to permit the legislature to revive a cause of action whose statute of limitation has previously run. Wisconsin courts have generally viewed our statute of limitations to exhaust the underlying rights and remedies in such cases. . . . Given the skepticism with which Wisconsin courts have approached retroactive statutes and the primacy of our statute of limitations, I [Attorney General Lautenschlager] would not expect the related provisions of this Bill to survive constitutional challenge."

A question of fairness is implicated by Assembly Bill 651, wholly distinct from leniency, which no one encourages. Wisconsin courts have concluded that fairness requires that statutes of limitations, intended to protect against stale claims, not be retroactively revived after the limitations period has expired. The Constitution requires this, as consistently recognized by both the Wisconsin Supreme Court and the United States Supreme Court.

Sincerely,

Boardman, Suhr, Curry & Field LLP
By

Richard L. Bolton

RLB/dp

F:\DOCS\wd\24620\2\A0631127.DOC

PREPARED STATEMENT OF

STACIE RUMENAP

Executive Director

STOP CHILD PREDATORS

Before the

COMMITTEE ON CHILDREN AND FAMILY LAW

of the

Wisconsin Assembly

on

Assembly Bill 651

An act to eliminate the statute of limitations for sexual contact with a child

January 24, 2008

Madam Chair and Distinguished Members of the Committee:

Thank you for allowing me to offer the support of Stop Child Predators for Assembly Bill 651. We share your desire to protect Wisconsin's children and are grateful for the attention you are bringing to this problem.

Stop Child Predators is a non-profit organization designed to prevent the sexual exploitation of children and protect the rights of crime victims. We achieve these goals by bringing together a team of policy experts, law enforcement officers, community leaders, and parents to launch state-by-state campaigns to educate lawmakers and the public. In particular, we urge states to adopt model legislation called The Sexual Offenses Against Children Act. The legislation is based on Florida's Jessica's Law and is named after Jessica Lunsford, the nine-year old girl who was abducted, raped, and murdered in Florida in 2005 by a twice-convicted sex offender. The law requires mandatory minimum sentences and electronic monitoring for convicted sex offenders. In the last two years since Florida passed Jessica's Law, 32 other states, including Wisconsin, have adopted provisions included in Jessica's Law. Legislators in at least six additional states are introducing similar legislation this session. The American Legislative Exchange Council endorsed the model legislation of Stop Child Predators as a guide for states that seek legislative change.

In addition to encouraging the passage of our model legislation, Stop Child Predators combats Internet crimes against children. We have worked with social networking sites, ISPs, and technology companies to support efforts to register electronic addresses and support tough penalties for enticement crimes and the possession and distribution of child pornography.

Whether the sex offense occurs physically or online, Stop Child Predators supports a variety of measures designed to promote public safety, from restricting the residency options of convicted sex offenders, to instituting a uniform national sex offender database, to eliminating the statute of limitations for child sexual assault.

Three states – Delaware, California and Maine – have no limitations on when child sexual assault cases may be reported.

Last year, Stop Child Predators had the opportunity to assist Delaware legislators as they eliminated the statute of limitations through their version of the Child Victims Act. The Delaware legislation lifted the civil statute of limitations in child sexual assault cases and implemented a two-year window during which any victim barred under prior law may file civil suits.

In California's version of the legislation, the window lasts one year.

Maine's law was originally written to include no window, so past victims may file civil suits at any time.

This type of legislation has been welcomed in the victim's rights community as convicted sex offenders are four times more likely than other criminals to be rearrested for a sex crime,

according to a 2003 study by the Justice Department's Bureau of Justice Statistics. That statistic probably understates the risk: it compares convicted sex offenders with other criminals, not the general population; it describes one-time sex offenders, not two-time offenders, who are probably more likely still to repeat the crime; and it counts only rearrests, when others may have committed sex crimes and gotten away with it.

Moreover, of the released sex offenders who committed another sex crime, 40 percent perpetrated the new offense within one year from their prison discharge and the majority of the children they molested after leaving prison were aged 13 or younger, according to the Justice Department study.

Despite their potential to repeat their crime, sex offenders are often released into society soon after being convicted. The average child molester is released into society after serving just three years of prison – and that is after receiving an average sentence of seven years, according to the most recent available data from the BJS. Unfortunately, judges have been overconfident in their ability to see changed people in first-time offenders, who are, again, four times more likely than other criminals to commit new sex offenses. Nor does compassion for the families of sex offenders justify an early release from prison: other BJS surveys show in almost half of the child-victim cases, the child was the perpetrators own son or daughter or other relative.

But the greater opportunity victims are given to speak out about their experiences, the greater the opportunity sex offenders can be identified and prevented from victimizing another child. The success of California's window legislation speaks volumes: civil suits filed by victims of sexual assault since 2003 have put hundreds of sexual predators behind bars and has allowed parents in those communities to better protect their children.

Supporters of this legislation, however, have drawn fire from many who suggest that such laws are unconstitutional. Critics argue that retroactively allowing any victim of childhood sexual abuse to bring forward previously time-barred civil action constitutes a violation of the ex post facto clause and Fourteenth Amendment due process protections of the U.S. Constitution. Such criticisms are unfounded.

Article I, § 9 of the Constitution – often known as the *ex post facto* clause – prohibits Congress from passing any ex post facto law; Article I, § 10 requires further that no state shall pass any such ex post facto law. The ex post facto laws described in the Constitution, however, are those that retroactively proscribe *punishment* based on criminal wrongdoing. The proposed window legislation in Wisconsin, however, does not come under the aegis of Article I, §§ 9-10, because it does not implement punishment of any kind; rather, it abolishes the time limits previously imposed upon child victims of sexual abuse. The purpose of the window is not to create a punishment, but to expand victims' access to the civil penalties to which they are entitled. The scope of the ex post facto clause of the Constitution therefore does not extend to this kind of retroactive legislation.

Further, the Fourteenth Amendment of the Constitution – the equal protection clause – provides that "no State shall…deprive any person of life, liberty, or property, without due process of law." But the U.S. Supreme Court has ruled that "[t]he *Fourteenth Amendment* does not make an act of

state legislation void merely because it has some retrospective operation." Rather, the Fourteenth Amendment protects – above all – due process rights; and these rights are not threatened by the kind of window legislation proposed in Wisconsin. Indeed, there are many quality-control mechanisms built into the justice system – including discerning judges and strict standards of evidence – that will protect due process. The window legislation simply serves to give sexually-assaulted children the right to confront their offenders – no matter how long after the alleged offense.

The distinction between the retroactive applications of *criminal* versus *civil* penalties becomes even clearer when you consider statutes of limitation in particular.

In *Stogner v. California*, which dealt with window legislation enacted in California to permit the resurrection of previously time-barred prosecution of sex-related child abuse, the Supreme Court found unconstitutional the retroactive application of a new criminal statute of limitation. Since the California statute in question (1) extended the criminal statute of limitation; (2) authorized the resurrection of previously time-barred criminal prosecutions; and (3) affected the plaintiff Stogner in particular by being enacted after the expiration of previous statutes of limitation for his alleged offenses, the Court found that the law represented "the kind of retroactivity that the Constitution forbids[.]"

In contrast, the Supreme Court has found the Constitution to be silent on the question of retroactively applying *civil* penalties. In *Chase Securities Corporation v. Donaldson*, for example, the Court noted that "[s]tatutes of limitations always have vexed the philosophical mind for it is difficult to fit them into a completely logical and symmetrical system of law." Nonetheless, the Court discussed in the same case the fact that "statutes of limitation go to matters of remedy, not to destruction of fundamental rights."

This distinction is particularly stark when the statute of limitation in question deals not with any substantive or fundamental rights, but rather with procedural rights. Civil statutes of limitation may be thought of as "practical and pragmatic devices to spare the courts from litigation of stale claims[.]" *Chase Sec. Corp. v. Donaldson*, 325 U.S. at 314.

The retroactive implementation of an abolished *civil* statute of limitation for childhood sexual abuse does not qualify as unconstitutional legislation. It is not a measure designed to inflict punishment upon offenders; rather, it is a mechanism for encouraging victims of child sexual abuse to come forward – both for their own sake, and for the potentially valuable information they may offer about offenders who may go on to commit repeat offenses.

The argument for the constitutionality of the proposed window legislation on federal grounds is clear: the statute of limitations in question is civil, and it affects litigation procedure rather than any substantive due process rights.

In addition to rights guaranteed by the U.S. Constitution, however, the Wisconsin State Constitution contains a provision (Article I, § 1) guaranteeing "life, liberty and the pursuit of happiness," in language that state courts have deemed functionally equivalent to the Fourteenth Amendment. Both clauses protect due process rights for citizens. The same arguments in favor

of the window legislation's constitutionality as applied at the federal level, therefore, also holds at the state level. *Criminal* penalties may not be applied retroactively, but *civil* penalties may, especially since in this case, the legislation in question concerns statutes of limitation affecting only procedural legal rules rather than fundamental rights. In addition, courts have acknowledged that state legislatures have a measure of latitude in establishing statutes of limitation; as long as due process rights are preserved, states may enact statutes of limitation as "a public policy about the privilege to litigate...subject to a relatively large degree of legislative control." *Chase Sec. Corp. v. Donaldson*, 325 U.S. at 314.

Furthermore, window legislation enjoys additional protection in Wisconsin as retroactive laws are presumed constitutional in Wisconsin, under *Martin v. Richards*. In case of any question on the constitutionality of such laws, the court may determine whether the retroactive legislation concerns matters of procedural rather than substantive rights. In the words of the Wisconsin State Supreme Court, "Statutes that are remedial or procedural are generally given retroactive application." *Neiman v. Am. Nat'l Property & Casualty Co.*, 613 N.W.2d 160, 164 (2000) (citing *Guter v. Seamandel*, 103 Wis. 2d 1, 17, 308 N.W.2d 403 (1981)). Since the elimination of the civil statute of limitation for childhood sexual abuse certainly falls into the "remedial or procedural" category, the proposed legislation is even more likely than normal retroactive legislation to be presumed constitutional.

Finally, Wisconsin courts are further mandated to weigh the balance struck by any retroactive legislation between public interest and any private interests at stake. The 'Martin test' – named after the case that originated this framework of analysis – is used to help determine constitutionality of expressly retroactive laws. This test provides a legal framework requiring courts to implement a balancing test for retroactive legislation: the public good is weighed against any private interests affected by the retroactive application of the statute.

In the case of the proposed window legislation, there can be no question that the benefit to the public interest far outweighs any private interests at stake. Eliminating the civil statute of limitation for cases of childhood sexual abuse has the potential to allow victims – previously silenced by the arbitrary time-expiration of the statute of limitation – to come forward and identify sexual offenders. If even one such offender is prevented from becoming a recidivist and harming another child, the benefit to the public will be immeasurable. The proposed window legislation therefore passes the Martin test for the constitutionality of retroactive legislation.

For these reasons, it falls to you as legislators to decide whether to eliminate the statute of limitations for child sexual assault. Stop Child Predators applauds Representative Suder and Senator Lassa for introducing this legislation, and we thank the committee for your interest in this issue.

CFSW
CITIZENS FOR A SAFE WISCONSIN

January 15, 2008

Since 2005, Citizens for a Safe Wisconsin, Inc. (CFSW) has been working to protect our children from violent sex predators. We are a state-wide advocacy group focused on policy change and public education with a goal that no child will be victim to sexual abuse and exploitation.

According to research from the State of Wisconsin, for every one known victim of a sex offender, there can be as many as fifty "unofficial victims" that are not reported. Until at least one of those victims speaks out, the offender remains free to cultivate yet another generation of innocent victims.

The organization Stop It Now! reports that 1 in 5 adults in the State of Wisconsin were sexually abused. The Department of Health and Human Services estimates that 90% of victims of childhood sexual abuse never report the abuse to law enforcement. We also know that these victims never report their abuse for fear of shame or of retribution by their attacker. For many young victims of sexual abuse, they repress memories of their horror for many, many years only to find that once they reach a point in their recovery where they can deal with trying to prosecute the offender, the statute of limitations has run out.

We believe the Child Victims Act (Assembly Bill 671) offers a vehicle of redress and recovery for countless victims of childhood sexual abuse. In our opinion, this legislation is yet another step in making Wisconsin the national leader in protecting the public from sex offenders.

Sandy Maher-Johnson

Shari Hanneman

Co-Founders, Citizens for a Safe Wisconsin, Inc.

Citizens for a Safe Wisconsin, Inc. ® P.O Box 320182 ® Franklin, WI 53132
WWW.CFSW.INFO
CFSW, Inc. is a 501©4 Organization

Wisconsin FAMILY Council Inc.
(formerly The Family Research Institute of Wisconsin)

PO Box 2075 • Madison WI 53701-2075
608-256-3228 (Madison) • 888-378-7395 (toll-free) • 608-256-3370 (fax)
Email: info@wifamilycouncil.org
Web site: www.wifamilycouncil.org

Childhood Sexual Abuse Civil Statute of Limitations
Memory Repression

Introduction

During the 1990s, a wave of memory repression cases flooded state and federal courts in the form of childhood sexual abuse lawsuits. Americans were appalled by stories of trusted members of the clergy and family members—even parents—sexually abusing innocent children. According to the developing memory repression theory, the childhood sexual abuse experience(s) was so traumatic and disturbing for the victim that he/she had suppressed all memory of it until adulthood, when a psychiatrist helped the victim remember the abuse.

Memory repression cases constitute an entirely different category than the more familiar childhood sexual abuse case. In those cases the victim knows he/she was being abused, has remembered the traumatic experience throughout his/her life, and was too scared to tell anyone at the time and/or no one believed the story. In the typical memory repression case, the alleged victim started therapy—usually for depression or an eating disorder—and was informed by his/her psychiatrist that the symptoms were typical for victims of childhood sexual abuse. After numerous therapy sessions, usually including hypnosis, the alleged victim would develop dreams and memories of childhood sexual abuse that the psychiatrist would interpret as solid evidence of abuse. Eventually, and often through suggestive questioning on the part of the therapist, the alleged victim decided on an alleged abuser—usually one or both parents, a close family member, a neighbor or a member of the clergy. The alleged victim would then confront and accuse the alleged abuser(s) privately and publicly and eventually bring a civil lawsuit against them.[1]

The reason for a civil lawsuit is simple: the time lapse between the alleged abuse and the accusation and the dearth of evidence. Because of the significant time lapse, anywhere from 10 to 40 years, even civil statute of limitation laws were typically not generous enough for memory repression cases.[2] Civil statute of limitation laws for childhood sexual abuse usually require claims to be brought within a particular number of years after the incident occurred or the victim came of age (anywhere from 2-10 years). Otherwise, the case is moot for lack of substantial evidence.

Repressed Memories in the Courts

A legal survey, conducted by the False Memory Syndrome Foundation (FMSF) during the 1990's, documents the litigation of childhood sexual abuse cases based on memory repression evidence.[3] The report indicates that those states with the most lenient statute of limitations laws for civil and criminal cases have had the largest number of filings. In order to admit repressed memory evidence, decades after the alleged abuse, in civil lawsuits, judges have applied various versions of the Discovery Rule and the Disability Exception, effectively extending the applicable statute of limitations.[4]

---

[1] http://www.fmsfonline.org/retract1.html, accessed 01/10/08.

[2] The FMSF survey was conducted using records of litigation from over 1800 repressed memory claims. Most of the claimants were between the ages of 25-45 and 90% were female. The plaintiffs usually claimed the alleged sexual abuse took place at an early age but that they didn't remember the abuse until three to five decades later. (http://www.fmsfonline.org/lipton.html#over, accessed 01/16/08)

[3] http://www.fmsfonline.org/lipton.html#over, accessed 01/10/08.

[4] In childhood sexual abuse cases, the Discovery Rule is used to extend the statute of limitations to the time the victim discovered the abuse, or the emotional or psychological ramifications of the abuse. Courts used the Disability Exception to toll the statute of limitations during a period of disability (resulting from repression, dissociation, denial, post traumatic stress disorder (PSTD), multiple personality disorder (MPD), psychogenic amnesia, etc. (http://www.fmsfonline.org/lipton.html#rise, accessed 01/16/08)

As of 1999, the year this report was published, nine state supreme courts, including Wisconsin's, have refused to consider whether the discovery rule applied to repressed memory claims because of the lack of substantial evidence behind the theory. In 1997, Maryland's highest court, the Maryland Court of Appeals, said, "[T]he studies purporting to validate repression theory are justly criticized as unscientific, unrepresentative and biased."[5] Civil cases require a preponderance of evidence but repressed memory claims are based entirely upon the alleged victim's repressed memory of the incident(s). Because childhood sexual abuse is such a serious crime and accusation, it should necessitate a high standard of examination, even in a civil lawsuit. However, the repressed memory of the alleged victim and the testimony of the therapist have been enough to slap the accused with huge damages, a ruined reputation and a destroyed family and life.

In some states (e.g., Arizona, Missouri, South Carolina), courts have left the question of whether to admit repressed memory evidence to the jury.[6] Due to the subjective nature of the supposedly expert testimony delivered in memory repression cases, some courts have established an "objective person standard" or instituted procedures to help protect against fraudulent claims. Childhood sexual abuse cases, especially, are so fraught with emotional overtones that it is difficult to retain a stringent standard of litigation. Once a state high court opens the floodgates for repressed memory cases by applying exceptions, however, only comprehensive legislation can stem the tide of lawsuits.

Repressed Memories in the Legislature

Tolling (extending) the statute of limitations for childhood sexual abuse cases brings up a number of additional issues: 1) Informed consent policies for therapists, 2) Therapy licensing, 3) Level of evidence for civil cases. Even in states where informed consent is an established practice and a high standard exists for both therapy licensing and levels of evidence, the three are rarely consistently enforced.

Informed consent means the therapist obtained consent from their patient for certain therapeutic procedures after informing them of the risks—including the capability of generating false memories—involved in the therapy. Expert testimony should also include therapy disclosures, so that the judge and/or jury are fully aware of the types of therapy that helped "recover" childhood sexual abuse memories.

Most repressed memory cases are filed after the alleged victim has undergone therapy—sometimes from unlicensed or poorly-licensed therapists.[7] Since memory repression theory is a relatively new phenomenon, and a highly controversial topic, therapists who practice it need to be highly regulated. Appropriately stringent licensing laws would allow legislators to monitor therapists and give the courts a standard to apply to expert testimony in repressed memory cases.

Sometimes the victim's repressed memories, and the therapist's testimony, were the only evidence used to condemn a defendant. So-called "second-generation" statutes, enacted in 1994 and 1995 in some states after the deluge of memory repression cases, include provisions making it more difficult to bring fraudulent cases, and more stringent rules for applying evidence. The courts apparently need to be held to an appropriate, objective standard for admitting evidence in repressed memory cases.

Conclusion

Repressed memory cases caught the judicial and legislative arena unawares and the subsequent legislation and court decisions show it. Notwithstanding the dearth of substantial scientific research on memory repression, judges and legislators bought into the theory and fashioned their legislation and legal decisions accordingly. As a result, they have departed from established procedure and precedent on statute of limitations laws and permissible evidence, opening the floodgates for memory repression lawsuits.

---

[5] http://www.fmsfonline.org/lipton.html#over, accessed 12/17/2007.
[6] http://www.smith-lawfirm.com/sol_Missouri.html, accessed 01/14/08.
[7] http://www.fmsfonline.org/lipton.html#over, accessed 01/14/08.

WAFCA
Wisconsin Association of
Family & Children's Agencies

131 W. Wilson Street
Suite 901
Madison, WI 53703
(608) 257-5939
Fax (608) 257-6067

Linda A. Hall
Executive Director

TO: The Honorable Members of the Assembly Committee on Children and Family Law

FROM: Linda A. Hall, Executive Director

DATE: January 24, 2008

RE: Assembly Bill 651 - Lifting the Statute of Limitations for Claims of Child Sexual Abuse

---

The Wisconsin Association of Family & Children's Agencies (WAFCA) appreciates your consideration of the following concerns regarding Assembly Bill 651.

WAFCA represents over forty private for-profit and nonprofit agencies that provide mental health, education and social services to people in need. Our members' services include family, group and individual counseling, chemical dependency treatment, crisis intervention, child welfare, day treatment, domestic violence programs and outpatient mental health therapy, among others. The majority of our agencies' work with families is supported by the public through Community Aids, Medical Assistance and local tax dollars.

As mental health services providers, our agencies are in the business of helping people identify and cope with the trauma of abuse. Of all the traumatic events that children may experience, child sexual abuse can be the most debilitating. Our agencies report that many of the adult clients receiving substance abuse or mental health services have an underlying history of sexual abuse.

As the research tells us, and our own experience with adult clients confirms, the long term effects of child sexual abuse are real and profound and it takes time for people to come to terms with the trauma.

Knowing all this, Assembly Bill 651 presents a challenge for our agencies as service providers. We stand in solidarity with those entrusted to our care who are struggling to rebuild lives that have been ravaged by abuse, yet we must engage the legal concern, as private sector agencies and organizations that AB 651 opens the possibility of new liability that could impact our financial stability.

Therefore we wish to share the following concerns regarding the financial implications of this legislation:

Potential for large financial settlements. Without a cap on damages, AB 651 introduces the potential for significant financial judgments. The majority of child and family agencies in the state do not have the fiscal capacity to withstand a large settlement. However, because a private organization or agency is likely to be better funded than an individual alleged perpetrator, agencies and organizations may be more likely to face claims.

Impact on liability insurance coverage. For child and family serving agencies, the already escalating costs of liability insurance are a significant concern. The elimination of the statute of limitations for civil liability in these cases is likely to further drive up the cost of liability coverage. Therefore, even without an allegation of past misconduct, private agencies operating under limited budgets will feel the impact. For family-serving agencies that are already financially stretched, the increased insurance expense may result in decreased capacity to provide services to those in need.

Private agencies providing a public service. The majority of the individuals that WAFCA member agencies serve have been referred for services by public entities. The mental health, education and social services that WAFCA agencies provide are, in essence, an extension of the public sector work that the state and counties do not directly provide. However, because of statutory limitations on damages that may be paid by public entities, even though we are working in concert with the public sector, our exposure is greater. Private social services agencies live under the same financial constraints as public sector entities and our budgets are just as challenged as county human services budgets.

As providers of mental health services, we appreciate that the legislature reviewed and extended the statute of limitations for criminal and civil actions in cases of child sexual abuse back in 2004. The extension that the legislature approved at that time is consistent with our agencies' experience that many adults do not come to terms with their abuse until well into their adult years. However, the complete elimination of the statute of limitations coupled with the ability to seek redress for claims that were previously time-barred, poses financial risk for our member organizations.

If the state could assure some limitation of that liability by establishing equitable damage caps, then our reservations would be mitigated. As currently drafted, we believe that the legislation exposes our member agencies to increased financial risk.

Thank you for your consideration.